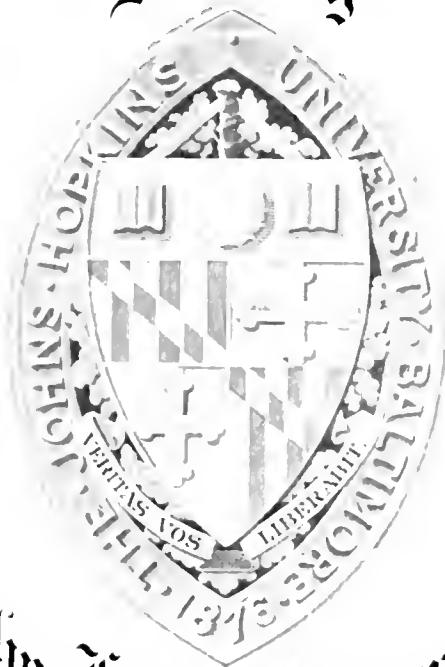


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SIR WILLIAM TEMPLE,
ON THE
ORIGIN AND NATURE OF GOVERNMENT.

In all the vast ranges of philosophy no problem, except religion and the genesis of things, has so profoundly exercised the minds of men as the origin, constitution and functions of the State. From the Books of Moses and the Republic of Plato down to Spencer's *Sociology* and Sidgwick's *Politics*, the nature and relations of that entity, which, in the language of the Realist and Nominalist ~~alike~~, exists apart from ourselves and which is yet a composite of us all, has ever been the subject of subtle analysis and popular polémic. Each age and generation in its endeavors to comprehend the rationale of our social conditions and to maintain or lessen the predominance over the individual life of the body politic has had a political philosophy peculiarly its own. Just as in the great life struggle of the animate world, political theories have adapted themselves to their environment, the needs and conditions of the country and times. Again as in the physical world there have been "sports" in the realm of political speculation; theories prematurely brought forth, anomalous to the prevailing opinions of their day. Thus with the subject of the present discourse. Abnormally developed it lived and died with itself.

Among the world's original thinkers Sir William Temple deserves a high, but hitherto unrecognized rank. Renowned in the annals of English diplomacy as the negotiator of the Triple Alliance so instrumental in checking the conquests and arrogance of Louis XIV; the statesman who first formulated the present cabinet system of England; famous in his age as a polite scholar and essayist; the first master of clear, vigorous prose, the elegance of which surprised and delighted the readers of the learned but wearisome disquisi-

tions of the "judicious Hooker" and the abstractions of John Locke; whose essay upon "Ancient and Modern Learning" brought on that fiery contest of wit, sarcasm and violent expletives which ended in Swift's "Battle of the Books;" of him, Gosse in his "History of English Literature" very truly says: "For all that has been written about him he is still 'one of those men whom the world have agreed to praise without knowing much' of their claims to reputation."

It is, therefore, most essential in order to appreciate fully the views of Sir William Temple upon the origin and nature of Government that one should be thoroughly conversant with the history and doctrine of the Law and State of Nature and the "Social Compact" and the theory of the Patriarchal Origin of Society. Otherwise Macaulay's depreciative judgment* respecting the essay would have some slight justification.

I.

The seventeenth century witnessed the great constitutional struggle and its practical settlement for the English speaking peoples. Her philosophers and practical politicians manfully attacked the vexed questions of government and sovereignty. Its origin, nature and limitations; the rise, force and extent of law; the rights of peoples and prerogatives of crowns, these and similar problems taxed the minds of the most ingenious. While England's statesmen and patriots were confuting the sophistry of the divine right of kings by the logic of rebellion and regicide, her philosophers were searching the fields of pure reason for the vindication of the sovereign rights and dominant will of the people.

Richard Hooker in his *Ecclesiastical Polity* (1593) cut the gordian knot in the theory of the State of Nature and the "Social Compact," borrowing the notion in great measure from Thomas Aquinas, who got it from the Greek philosophers. In the beginning man was born into the natural state, free, unrestrained by the hand or will of his fellowmen. But by

* Collected Works, vol. 6, p. 280, Essay on Temple.

reason of "defects and imperfections which are in us living singly and solely by ourselves we are naturally induced to seek communion and fellowship with others. This was the cause of men uniting themselves at first in politic societies."*

Hobbes in the *Leviathan* (1651) in many respects adhering to the conception expounded by his great predecessor gave much greater prominence to the rôle played by natural law in the State of Nature. The laws which governed this prehistoric Elysium were "Justice," "Equity," "Modesty," "Mercy," and in sum "doing to others as we would be done to."† But Hobbes modified, in fact, assigned totally different reasons for the rise of government and society than those cited from Hooker. While the latter ascribes its beginning and necessity to the imperfections and disabilities of men, Hobbes discovers it in their warlike nature. Although primeval man was born into that peculiarly felicitous state of nature, surrounded by that intangible something denominated natural law, his anti-social nature defeated all its beneficent designs. The innate irresistible perversity of our primitive ancestors overwhelmed the all-pervasive law. Men were eaten up with passions and appetites, pride and contentions. With such belligerent elements the archetypal State of Nature became a State of War. Becoming weary of such continual, internecine struggle men obtained a respite by a mutual surrender of their immemorial individual rights. Their mutual agreement was cemented in the "Social Compact," and we have the beginnings of political society and government. The state and the machinery of government existed for the purposes of carrying out the provisions of that compact. The executive, whether tyrant,

* Ecclesiastical Polity Bk. I., sec. 10. Hooker's purpose in writing *The Ecclesiastical Polity*, it will be remembered, was primarily to investigate and define the laws of church organization in order to fortify the English church against the attacks of the Puritans and Catholics. But in so doing he set forth the great underlying principle of all forms of organization, social and political, as well as ecclesiastical. It was with his profound and cogent arguments that John Locke, a hundred years after, did giant service in refuting the doctrines of the very Tory party of which Hooker had been such a prominent leader and source of strength.

† Part II. Chapter XVII.

elective monarch, council of ten, or representative body like parliament were simply the executives, or servants, of the will of the people, the aggregate of all the free and equal individuals entering into the agreement. Upon the due fulfilment of official duties and the pleasure of the people, the life of ministers, monarchs and governments is dependent.

The theory of the contract origin of government did not, however, emanate entirely from the *a priori* considerations of the political philosophers of the sixteenth and seventeenth centuries. Along with the notion of the divine origin of government and the dogma of the "divine right of kings," the idea that rulers were merely the administrators of the pacts of a people prevailed to an almost equal extent. The common political traditions and maxims of the times bear evidence of the universality of the theory of the Social Contract. The semi-legendary accounts of the introduction of law into Crete by Minos; the convention of Athens with Solon, of Sparta with Lycurgus; the quasi compacts and covenants of Moses and Joshua with the people of Israel, their assemblages for the selection of a judge or monarch; the choice of the kings and magistrates of Rome by the votes of the comitia; the dominance of the Spanish Cortez, and the Scandinavian Thing; the riotous independence of the Polish nobles in the Diet of Warsaw, the electoral college of the Holy Roman Empire; and in England the Wittenagemote of Anglo-Saxon times, the victory of Runnymede, the oath of the kings at their coronation to observe the laws and customs of the people and the famous compact made on board the *Mayflower*, all were the stock historical arguments of the exponents of the natural liberty of men in pamphlet, treatise and parliamentary debate.* The political essays and writings of prominent agitators and leaders like John Milton

* Since this was written an article in the *Political Science Quarterly*, December, 1891, "The Social Contract Theory," by Mr. D. G. Ritchie, also points out the very marked influence of the contract theory in the practical as well as the philosophical politics of the revolutionary epoch. Mr. Ritchie traces the theory back through Aquinas to Plato and the Sophists.

and Algernon Sydney* bespeak the common acceptance of the doctrine of the compact as the basis of society. Government was proclaimed a contract dissolvable at will. That which the people set up yesterday may be torn down to-morrow if such be their will.

Upon these premises of the conscious formation of social institutions, of the necessary and ultimate consent of the people in giving validity to any form of government or rule of law, the opponents of Stuart absolutism based their theories that crowned heads were amenable to the will of the people. By such philosophy the extremities and enormities of revolution were justified and insurgents exonerated.

Sir Robert Filmer in his famous tract *Patriarcha, or the Natural Powers of Kings*,† attempted to counteract "the rebellious consequence" of the theories of the school of natural liberty. His was a futile effort to veneer the tyranny, prodigality and profligacy of kings with the gloss of sacred

* Sydney's *Discourses on Government* written 1663 while exiled for his out-poken hatred of irresponsible royalty, afford ample proof of its prevalence. Although far from being so calm or close, or so profound a reasoner as Hobbes or Locke, his arguments, often fiery and sarcastic, are well supported by copious illustrations from ancient and contemporary history. Thus in the following passages: The law of nature is "the only law that God ever did, in a public manner, give to man. . . . All Israel was by command of God, assembled at Mizpeth to chuse a king, and did chuse Saul (1 Sam. x): he being slain, all Judah came to Hebron, and made David King (2 Sam. ii): after the death of Ishbosheth, all the tribes went to Hebron, and anointed him King over them and he made a covenant before the Lord (2 Sam. v): when Solomon was dead, all Israel met together at Shechem (and ten tribes, disliking the proceedings of Rehoboham, rejected him, and made Jeroboam their King (1 King xii) . . . The histories of all nations, and especially of those that have peopled the best parts of Europe, are so full of examples of this kind that no one can question them. . . . The great matters among the Germans were transacted *omnium consensu; minoribus consultant principes; de majoribus omnes*. The "michelgemote" among the Saxons was an assembly of the whole people. . . . In the like manner when a number of men met together to build Rome, any man, who disliked the design might justly have refused to join it, but when he had entered into the society he could not by his vote invalidate the acts of the whole nor destroy the rights of Romulus, Numa and the others, who by the senate and people were made Kings." (Ch. II., sec. v.) And again in sec. vi, "God did not only make the institution of a king to be purely an act of the people, but left it to them to institute one or not, as it should please themselves; and the words, 'whom the Lord shall choose' can have no other signification than that the people resolving to have a king, and following the rules prescribed by his servant Moses, he would direct them in their choice."

† Written before 1655, but not published till 1680.

inviolability and divine sanction. With a dogmatic assurance that seems strange to readers of to-day, he proclaims the world subject, in accordance with divine will, to the paternalism of kings. With the aid of strict, literal interpretation of Bible myths and stories, he denied that there ever was a time when men were free and equal. "When there were only two in the world one was master. When children were born, Adam was master over them. Authority was founded by God Himself in Fatherhood. Out of Fatherhood came Royalty, the Patriarch was king."*

Some writers and biographers have given Filmer the distinction of first expounding the patriarchal theory of the origin of society. The perusal of his work, however, does not seem to warrant such a judgment. At best, his extremely partisan treatise was only a good condensation and paraphrase of the Mosaic account of creation and the history of man in the first five books of the Bible, together with a few apt quotations from Plato, Aristotle and the patristic writers. Furthermore there is nothing approaching a scientific exposition of the patriarchal theory, such as we know it from the writings of Maine and Spencer. Besides, what claim he had to priority of application is invalidated by the much clearer and by far the more scientific treatment of the same subject by Aristotle. What Filmer has unrivalled claim to, however, is the embodiment and setting forth in his *Patriarcha* of paternalism in government. While this doctrine formed, no doubt, a cardinal belief of the writers and thinkers of that and former ages, yet it seems irretrievably connected with the apologist of the divine right of kings.

In 1689 Locke wrote his *Two Treatises of Government*, the philosophical justification of the Revolution of 1688. In the first he devotes all his energy to overthrowing the "false principles and foundation of Sir Robert Filmer and his followers." In the second he accepts without modification the views of Hooker regarding the rise and nature of society.

* Introduction to Locke on Government; Morley's Universal Library.

With him as with his predecessor the entire social fabric rests upon the conception of the compact. Not only society in the aggregate, but the social unit, the family, exists because of a compact; the relations of husband and wife, of parents to children, are due to a contract between the several members, and may dissolve by consent or dissent.*

It may be remarked in passing, as Mr. John Morley has pointed out in regard to Filmer† that Milton, Sydney and Filmer were better historical students than either Hooker, Hobbes or Locke and later Rousseau. They took the best historical records and materials extant to substantiate their theories. Whereas Hooker and the philosophers assume as a basis "a non-historic, unverifiable condition of the race."‡

The great part played by a similar conception in giving shape and direction to the laws and institutions of Rome and those arising out of her ruins must also be constantly borne in mind. One of the most important factors moulding and expanding the great system of Roman jurisprudence was the *Jus Naturale*. Originally meaning the observed order of phenomena, the sequence of cause and effect in the physical world, the Stoics by one of those subtle mental transpositions, so common in progress of thought, conceived of the harmonies of nature, as representing the pristine perfection of man, of which the poets sang and all men longed for and strived to reach. Borrowed from philosophy by the Prætors and *Juris Prudentes* the Law of Nature was used by them to modify and extend the rigid, strictly local and national law of Rome into that great system of jurisprudence, comprehensive and universal in its application, the code of Justinian.§

With the Romans, however, although in its final analysis it implied a prehistoric state, regulated by Natural Law, the

* Essay on Government, ch. vi, sec. 56, 57, compare with the same idea in Rousseau's Social Contract. Bk. I, ch. ii.

† His Rousseau, ch. on "The Social Contract"

‡ Maine's Ancient Law, p. 114.

§ Maine's Ancient Law, Chap. III. Muirhead, Roman Law. Part IV. Sec. 55

juriconsults ever regarded it as "something entwined with existing institutions."* This conception served a two-fold purpose, both as a makeshift and as an ideal. It kept before the eye of Roman lawyers "a type of perfect law, and from its inspiring the hope of an indefinite approximation to it, at the same time it never tempted the practitioner or the citizen to deny the obligation of existing laws which had not yet been adjusted to the theory."†

The French lawyers who were the immediate heirs of the Roman jurists transmitted the doctrine of a Law and State of Nature to the politics of the middle ages. The rapid growth of absolute monarchy in France was largely due to the harmony and co-operation between the crown and the interpreters of law and custom. Here again it was made a means of fixing and strengthening existing social arrangements. Its work was constructive. It emphasized the present with an eye to the future.

But such a use of the Law of Nature by the ancient and mediæval jurists was something radically different from that to which it was subjected by the English philosophers of the seventeenth century. It may be true, as Maine says, that "the Lockean theory of the origin of Law in the social compact scarcely conceals its Roman derivation."‡ Nevertheless, the theory of Hobbes, we have seen, expressly repudiates the previous existence of a beneficent State ~~and Law~~ of Nature as conceived of by the English Ecclesiastic and the Roman Lawyers. Hooker, Hobbes and Locke turned upside down the Roman conception; it was not the Law but the State of Nature, which was the chief object of contemplation.§ All their teachings revert to the State of Nature as a thing of the past and not as "entwined with existing institutions." A century later the anarchistic cry of Rousseau "Back to Nature" was in great measure an echo of the

* *Ancient Law*, p. 73.

† *Ibid.*, p. 77.

‡ P. 114.

§ P. 88.

English controversy. The theory as expounded by these men was destructive, subversive of present political arrangements.

But these dogmas of the exponents of natural liberty grew out of the needs of the times, and they served a magnificent purpose. Political writers sought a fulcrum upon which to rest the lever of the right of revolution against the irresponsibility of kings. Agitators wanted a shibboleth of political propaganda and they obtained it in the cry of Natural Rights.

The history of the theory that society had its origin in separate families, held together by the power and authority of the house-father, must also be kept in mind, or we shall not be able to judge correctly of the originality of Temple's ideas upon this subject or appreciate how much he departed from the dominant views of that and the succeeding century.

The great epic poems of Greece and Rome, the books of Moses and the legends and traditions of many nations presented pictures of the patriarchal organization of primitive societies. But they were simply pictures, traditional descriptions. Nothing approaching an analytical treatment of the theme can one find. Plato in the *Laws* (Bk. III, 680), Aristotle in his *Politics* (Bk. I, 2) set forth the theory. The former briefly, the latter enunciates the theory in a logical, compact statement that has not been much improved upon by modern investigators. But it was introductory merely to his extended treatment of slavery and is not elaborated. Again we must remember that the society which he saw about him was organized upon the patriarchal and tribal plan. The family was the unit. Aristotle could not well conceive of any other.

Furthermore, we must not forget that the theories of Aristotle suffered the common fate of Greek philosophy during the dark ages. Aristotelianism itself had been dealt some vigorous blows by Bacon in the early part of the seventeenth century and had fallen into general disfavor. Its correspondence with the story of Genesis alone kept his theory of the

patriarchal beginnings of society alive. "Its place" says Maine, "was taken by the *a priori* theories of the State of Nature which long satisfied curiosity as to the original condition of mankind. Its revival may be said to be owing to Niebuhr's discovery of the Commentaries of Gaius."*

With this hurried sketch of the theories of political and social origins we can begin our study of Temple in a more appreciative and intelligent manner; aware of the times in which he wrote, the materials he had to work with and the current of philosophy against which he had to force his opinions.

II.

In 1672, eight years before the publication of Filmer's work and nearly twenty before the treatises of Locke, with the theories of natural liberty filling the air and almost universally accepted, Sir William Temple wrote his *Essay upon the Original and Nature of Government*. His purpose, like that of Sydney and Locke, was the justification of the popular will and the demonstration of its right to rule the policies of State and the procedure of administration. But he revolted from prevailing theories. He blazed his own path through the interminable books and dogmas of that prolific period. He threw aside as worthless both of the conflicting doctrines. Impressed only with the palpable errors and absurdities of contemporary theories he discarded good as well as bad. Their advocates he regards as visionaries, and often speaks of them with mild sarcasm.

Temple's political activity had brought him into touch with the social and political life of mankind. He had helped to guide the course of political energy and to manipulate social forces. He had had excellent opportunities to observe the individual and corporate actions of men under a would-be absolute monarchy and under a republican *régime*; and he clearly perceived the sophistry and inadequacy of the reasonings of both "the schools." The antecedent state and law of nature, the much-mooted compact of our most

* Early Law and Custom, p. 197.

happily situated but perverse ancestors, he regarded as the height of vagaries and delusions.* Over against the *a priori* assumptions of the closet philosopher he sets the facts of his own observation and his interpretation of the facts of history. As his goal is the same, he reiterates in his own way, many of the cardinal principles of the Natural Liberty School. But in his critical analysis of the genesis and ultimate sources of government, law, authority and institutions he delved much deeper than his predecessors or immediate successors. Probably unacquainted with Filmer's unique apology for royal license, Temple developed into a well-rounded theory what is now known as the Patriarchal Theory of the Origin of Society; and, what redounds more to his credit, his conclusions have not been changed or even modified by the researches and investigations of this crucial century.

The thesis which Temple desired to establish in the minds of political thinkers and agitators was that crowned heads, however powerful or long their continuance in power, were yet accountable to the people; that their tenure and privileges of office rested with the opinion of the masses. It is in demonstrating this doctrine that he sets forth the theory of the origin of government and assigns the proper place to custom in the formation of law and the evolution of social institutions. Government, he maintains, is an outgrowth of man's necessities; law, the crystallization of custom and precedents; society, a creature of history and circumstances and a development from meagre beginnings. His exposition of this growth and his consideration of all the forces and influences bearing upon a national character are quite adequate and comprehensive.

The source and conditioning factor of government, he discovers in the family. Upon the development of this

* Temple's Works, Vol. I., pp. 37, 38, 39. All references here are to the edition published in London 1774. Temple was perhaps the most popular and most widely read essayist of the eighteenth century, and his writings went through numerous editions. I have been able to find mention of ten. The order of contents in the different editions varies.

social unit depends the character of the social aggregate. He grasps clearly the fundamental idea that underlies all law and institutions, namely, that they are a growth, an evolution. Modern society and government arose, he tells us, not from any self-conscious act or determination but as the result of an unconscious bending to conditions and surroundings. Its structural formation is moulded, modified, and directed by circumstances, by situation, by climate, by innumerable minute but character-shaping forces. He discerns with the insight of Buckle or May the subtle but powerful influence of soil, scenery, physical environment, of food-stuffs even, upon the physical, intellectual and moral energies and character of a people. The opening paragraph of the essay is illustrative of his attitude in looking into the history of men and governments.

"The nature of man seems to be the same in all times and places, but varied like their statures, complexions and features by the force and influence of the several climates of which they are born and bred; which produce in them by a different mixture of humors and operation of the air, a different and unequal course of imaginations and passions and consequently of different discourses and actions. These differences incline men to several customs, educations, opinions and laws which form and govern the several nations of the world where they are not interrupted by the violence of some force from without, or some faction within, which, like a great blow, or a great disease, may either change or destroy the very frame of a body; though if it lives to recover strength and vigor, it commonly returns to its natural condition, or something near it."

In the presentation of Temple's views his own order as given in his essay will be followed in the main. In nearly all of his other writings he makes occasional observations upon the nature and growth of society, and where especially applicable they will be freely incorporated here.

Reading the history of the various nations of the world and comparing governments, past and present, Temple con-

cluded that the many and diverse forms of state and sovereignty could be classified under two main heads.* One is the monarchical where sovereignty is vested in one head who exercises it with or without conscious reference to the wishes of his subjects. The other is the Commonwealth, where "certain orders or laws introduced by agreement or custom" control the actions of the body politic. Like Aristotle he considered a pure democracy the worst of the undesirable forms of government and for practically the same reasons.†

With the natures and dispositions of men practically the same in all times and places what, asks Temple, is the ultimate guarantee of law and government, what insures the capability and efficiency of the state; what was its origin and what were the forces tending to cause its multiform development? The analysis of political phenomena shows society held together by organized force; its origin he discovers in the social, gregarious instincts of men; and its development conditioned by circumstances.

The phenomena of monarchical rule and popular government, he explains, by a differentiation and development of one and the same institution, the family. Both forms have their beginning in the organization of the family and the despotic authority of the house father in primitive times. The absolute supremacy of the patriarch arose from the natural relations of parent to offspring. What we may call the natural authority of the father began with the helpless state of the child. Its utterly dependent condition, the anxious care and constant protection needed during its formative periods; the labors and deprivations the parent undergoes in order to sustain its life; the supervision of its training and guidance as to what is good and evil, these and many other reciprocal relations augment the father's so-called natural right to obedience and the duty of the child

* Pp. 39-35.

† P. 46.

to give it.* "Law is the parent's word in early society." † It is in this unconscious or, if necessary, forced submission to the will of the *pater familias*, and in the growth of the *patria potestas* that Temple interprets the facts of society, law and government. The patriarch by this natural right and authority becomes the governor of a little State "and if his life be long and his generations many (as well as those of his children) he grows the governor or king of a nation and is indeed a *pater patræ* as the best kings are." ‡

On the death of the father this power and authority is transmitted to the eldest son, provided he display those qualities and attributes which command respect and obedience.§ But, if he lacks these prerequisites, or dies before the father and leaves a child as his heir, then the next son is chosen to the headship, or what is more probable, thinks Temple, the brothers form a counsel of elders. Here we have the first conscious exercise of the will and choice of the members of this diminutive state.

This is the inception of that change soon to develop into an aristocracy with a marked tendency towards oligarchy.|| Should the members of the community congregate in towns and cities and become active in trade and increase in riches, then a commonwealth is the probable evolution, for reasons to be assigned. A commonwealth, he considered, as no more than the expansion and extension of free cities, founded either at the instance of some great law-giver or formed into their peculiar form by convenience or the pressure of war.¶

With the growth of families into clans and their union into tribes and finally into nations comes the separation of the powers and functions of the patriarch and king. Religious,

* Pp. 39-43; compare with Locke, *Government*. Book II., ch. v. secs. 53, 66, 67, where he all but reaches Temple's view.

† Maine.

‡ P. 41.

§ P. 43.

¶ P. 46.

¶ P. 48.

judicial and executive duties become specialized in priests, judges and kings, consuls and magistrates. Status and the ties of blood no longer entirely regulate as in the most primitive forms of organized society, the occupancy of office. The exclusive enjoyment of official privilege is lessened and finally taken away by resident opposition, rebellion and a growing consciousness of power in men. Authority comes more and more to be the expression of popular conviction and will.

During all these stages from the patriarchal to the democratic form of government the ultimate source and guarantee of authority, Temple asserts, is in the opinion and consent of the members of the community. True, it may be silent, but it is most potent. This opinion is due to their knowledge of the goodness, piety or divine favor of the prince or ruler, the valor, eloquence, cunning or other personal distinctions of their chief.* The peaceful submission to them and their descendants is aided by a long line of predecessors. Tyranny and absolute monarchy "is by nothing so much strengthened and confirmed as by custom. For no man easily distrusts the ^{persons,} ~~seasons,~~ or disputes the things which he and all men that he knows anything of have always been bred up to observe and believe."† Temple gives us the very pith of political philosophy in these words.

Nor can any one person or party hope to change the form or offices of government unless by a display of the aforementioned characteristics they can show the people that their rights and customs have been transgressed.‡ This is the explanation of the submission of a people to the demands and impositions of tyrants. They or their ancestors had exhibited qualities and abilities which commended them to the suffrages of the people. Custom and that political lethargy which comes with long continued oppression exerts the most powerful influence in constraining men to a passive obedience.

* Pp. 35-36.

† P. 37.

‡ *Ibid.*

Temple advances a perfectly valid argument in support of the idea of kinship underlying nationality by adducing the words designating rulers and countries among different peoples.

"The peculiar appellation of the king, in France, is the name of *Sire*, which in their ancient language is nothing else but father, and denotes the Prince to be the father of the nation. For a *nation properly signifies a great number of families, derived from the same blood, born in the same country, and living under the same government and civil constitutions*; as *Patria* does the land of our father, and so the Dutch, by expressions of dearness, instead of our country, say our fatherland."*

The definition of a nation, which I have italicized, is an exceedingly comprehensive one. Compared with those given by our modern publicists it is most admirable and worthy of no little attention. While not so compact as that of Bluntschli's, "the State is the politically organized people of a particular land," or so elaborate as that of Mulford,† yet the essential characteristics of a national polity are correctly and succinctly set forth.

Continuing his argument for the patriarchal beginnings of government Temple adduces as proof the immemorial terms of address and salutation in court language and ceremony. Curiously enough Herbert Spencer in showing the evolution of modern manners and fashions from the circle of the primitive family brings forward the very same examples.‡

"These seem to have been the natural and original governments of the world, springing from the tacit deference of many to the authority of one single person. Under him (if the father of the family or nation) the elder of his children comes to acquire a degree of authority among the younger by the same means the father did among them and to share with him in the consultation and conduct of their common

* P. 41.

† *The Nation*, ch. i.

‡ Collected Essays, Vol. III, p. 20. *Manners and Fashion*. Principles of Sociology, Vol. II, pp. 164-166, ch. on Titles.

affairs. And this, together with an opinion of wisdom from experience, may have brought in the authority of elders so often mentioned among the Jews; and in general of aged men. . . . For the names of Lord, *Signior*, *Seigneur*, *Señor*, in the Italian, French and Spanish languages, seem first to have imported only elder men, who thereby had grown into authority among the several governments and nations."*

"Thus a family seems to become a little kingdom and a kingdom to be but a great family; "† or to quote the words of Professor Woodrow Wilson, "State is family writ large."‡

In the causes which Temple assigns for the rise of commonwealths, he shows his intimate acquaintance with political life. And what is more, he fully perceives the important part played by trade and commerce in giving shape to political societies and institutions. His observations upon their civilizing influences are not unworthy of comparison with the words of John Stuart Mill and Herbert Spencer.

The commonwealth is due to the disintegration of monarchy, brought about by the crowding of people into towns and cities, and the increase of material prosperity and commercial activity.§ It may be due to any one or all of three causes. (*a*) The close contact and association of citizens with each other which city life necessitates destroy that sanctity and mystery surrounding the person which is so essential to the monarch in preserving his sway over the popular mind. The opportunities for conversation and communication sharpens men's wits and they pierce through the shams and pretences of royalty. (*b*) The small compass of the city renders councils, assemblies, and public discussion a matter of little or no inconvenience. (*c*) Great wealth and a flourishing trade make men more independent and self-sustaining. They seek safety and freedom from the violence and caprice of kings; and these are better conserved by laws and magis-

* Pp. 41, 42.

† P. 42.

‡ The State, p. 3.

§ Pp. 32, 33.

trates chosen by popular election, than by the uncertain protection of an arbitrary ruler.

Whereas, in agricultural and pastoral countries, thinly and sparsely settled, the opposite is true. People are poor and hard pressed for a livelihood. There is little to stir their ambitions or arouse the spirit of independence. Their faculties are dull and slow of action ; “ having little to lose [they] have little to care for and are less exposed to the designs of power and violence. The assembling of persons, deputed from people at great distances from one another, is a trouble to them that are sent, and a charge to them that send. And, where ambition and avarice have made no entrance, the desire of leisure is much more natural than of business and care : besides, men conversing all their lives with the woods and the fields, and the herds, more than with one another, come to know as little as they desire ; use their senses a great deal more than their reasons ; examine not the nature nor the terms of power and authority ; find only they are fit to obey, because they are not fit to govern ; and so come to submit to the will of him they found in power, as they do to the will of heaven, and consider all changes of conditions, that happen to them under good or bad Princes, like good or ill seasons, that happen in the weather and the air.”*

His observations upon the effect of commerce and the form of government on the religious life and institutions of men are extremely interesting and most excellent withal. The activity and demands of trade and the freedom of intercourse permitted in a commonwealth tend to the levelling of creeds, customs and ceremonies. Men become less bigoted, sects less intolerant and more harmonious. In his delightful chapter describing the religious life of the industrious Dutch he observes :

“ The differences in opinion make none in affections, and little in conversation where it serves but for entertainment and variety. They argue without interest or anger ; they differ without enmity or scorn ; and they agree without con-

* P. 33.

federacy. Men live together, like citizens of the world, associated by the common ties of humanity, and by the bonds of peace, under the impartial protection of indifferent laws, with equal encouragement of all art and industry, and equal freedom of speculation and inquiry; all men enjoying their imaginary excellencies and acquisitions of knowledge with as much safety as their possessions and improvements of fortune. The power of religion among them, where it is, lies in every man's heart."*

His views concerning the origin of slavery and the use of mercenary soldiers are generally in harmony with more modern investigations. Slavery, he says, comes into existence when men, desirous of escaping the drudgery and heavier toil of life, make forays upon neighbors for servants. Or the victims and captives of inter-tribal warfare are given the choice of slavery or death. Fugitives from other tribes "sell their liberty to be assured of what is necessary for life." The self-surrender of those "debased natives" "who seem born to drudgery," and those "who are content to increase their pains that they may lessen their cares" are also means of maintaining slavery.† There is not, however, any belief in the foreordination of certain men or classes of men to servitude as in the Aristotelian conception. His observations on the position of the slave in the household and the privileges due him are more descriptive of feudal servitude than of slavery in the primitive family.

Mercenary soldiers came into requisition when kings lost the good opinion of the people. Such a one was called a Tyrant, who used his subjects like servants, and "thinks he can not be safe among his children but by putting arms into the hands of such of his servants as he thinks most at his will: which was the original of guards."‡

Enough has been given to outline Temple's theory of the development of government and society from the family organization. So far as it pretends to deal with primitive

* P. 181

† P. 43.

‡ P. 44.

forms of political life, no material addition could have been made except what one could now add in the way of corroborative evidence from modern studies in historical and comparative jurisprudence and anthropology. We do not find any extensive treatment of ancestor worship or of the great rôle played by religion in early and barbarous communities of which we learn so much in the works of Tyler, Maine, Spencer, and de Coulanges. But he, everywhere, appreciates the tremendous influence of religious feelings and institutions in keeping the social balance and moulding the lives of men and States.* He notes and adds some sensible comments upon primitive forms of marriage. The community of wives and many of the customs which now seem repulsive to modern civilization, he justifies on the grounds of necessity and utility.† We might infer from several passages in his writings that he apprehended the fact of the common ownership in land and all the phenomena attending that mode of life, but he offers no definite statements regarding his views.

III.

From the standpoint of the student of early law and custom, nothing in Temple is of greater interest than his ideas concerning the place of custom in the formation of law. The theories of Bentham and Austin concerning the nature and exclusiveness of positive law were so universally accepted during the last half of the last century and the first of the present, that we are wont to refer their modification and the introduction of the historical and comparative treatment of law to the efforts of Savigny and Sir Henry Maine. The doctrine that the groundwork of law and wise legislation is to be found in the persistent habits, usages and customs of a people is continually pointed out in the various essays of Temple. "Custom . . . grows to pass for a right, as all custom does with length and force of time." "The Prince that governs according to the conditions of subjec-

* Vol. III., pp. 74, 75. Introduction to the History of England.

† *Ibid* pp. 75, 76.

tion at first agreed upon (of which use is the authentic record) and according to the ancient customs, which are the original of laws (. . .) is called a lawful sovereign."* Creeds even, church ceremonies, religions themselves, as well as laws, "come to be established by the concurrence of men's customs and opinions."†

Upon the due observance of the laws and customs indigenous to the soil and dispositions of a people depends the security of governments; especially those imposed upon newly conquered races. In his somewhat enlogistic defence of the acts of the Norman conqueror Temple dwells most upon his wise, sagacious policy of respecting the Anglo-Saxon laws and making them the foundation of his reforms and innovations. His chief purpose in his short sketch of early English history is to show that the conquest was not a complete breaking with the past. The old laws and customs were not abolished. The national life of the people was unbroken.‡ Thus again in the measures proposed by him for the advancement of Irish trade, he says that this people requires special enactments in order to meet their peculiar conditions and modes of life, resulting from the many misfortunes which had befallen them in their varied history.§

Always happy in his use of metaphor and trope Temple illustrates the continuity of national life and the organic nature of society by one of the most felicitous figures in the English literature. It is not only a specimen of literary elegance, but it is a passage pregnant with political wisdom. "All great changes, brought about by force or address, in an old constitution of government, rooted in the hearts and customs of a people, though they may in time prove an increase of strength and greatness (when fallen into method and easy by use) yet, for many years, they must needs

* Vol. I, p. 47.

† Vol. I, p. 173.

‡ Vol. III, pp. 118, 123, 130-137, 160-164. Introduction to the History of England.

§ *Ibid.*, p. 6-8.

weaken it, by the divisions and distractions of men's minds, and the discontents of their humors. . . . The breaking down of an old frame of government and erecting a new, seems like the cutting down of an old oak and planting a young one in the room. 'Tis true, the son or grandson (if it prospers) may enjoy the shade and the mast; but the planter, besides the pleasure of imagination, has no other benefit to recompense the pains of setting and digging, the care of watering and pruning, the fears of every storm and every drought; and it is well if he escapes a blow from the fall of the old tree, or its boughs, as they are lopped off."*

Throughout his entire dissertation and in his other writings Temple recognizes the necessity for the existence of government. The State grew out of the strivings of men to satisfy their wants and needs. It continues in existence for the sake of a higher and better life. "The end of government" is "the *salus populi*."† "Government is a restraint upon liberty and under all [forms] the dominion is equally absolute." When men contend for liberty it is not to abolish government, but to change the form. Men instinctively know that society and civilization is not possible without it. They, therefore, submit to the power of one man, not from fear or "want of heart, but it must be force of custom or opinion, the true ground and foundation of all government and that which subjects power to authority."‡

The State is the embodiment in law and the mechanism of administration of the social, gregarious instincts of men. It is organized force and authority backed by the will of a people for the effectuation of the ends of life. By its exercise alone is individual life and progress possible. In the equalization of the conditions of life, and the lessening and removal of the inequalities of nature the State is indispensable. The improvement of trade and industry, the raising of the level of competition and the bettering of social life and

* Vol. II, pp. 213, 214. A Survey of the Constitutions and Interest of European countries written to the Secretary of State on leaving the Hague, 1671.

† Vol. III, p. 47.

‡ Vol. I, p. 34.

surroundings, Temple points out, is only brought about by the constant intrusive co-operation of the State.* The corporate action of society must coerce men into right living. The State must do for the individual what he or a combination of individuals can not do for the best interest of all. The solidarity of society, the intricate and immediate relations of every social factor with all others, he perceives in a very marked degree. He dwells long upon the power a government has of raising or lowering the intellectual capabilities, industrial energy and moral character of men by the part it plays in those spheres of action.

The principle, Temple gives, which should guide the State in its participation in social and industrial affairs is eminently utilitarian. That exemplary Dutchman whom he held up before Englishmen as the thrifty merchant *par excellence*, he frankly tells us, was honest because he found it wise policy to be so. In the beginning he had been forced by the demands of trade to be upright and law-abiding and afterwards the custom grew upon him. The United Provinces had discovered by long experience that strict laws relating to the purity and genuineness of their wares and their rigid enforcement had been of incalculable value to their merchants. Upon this simple basis of utility and the sovereign right of the majority to direct its own affairs Temple rests the criterion for State action.

One thing the reader will observe in a study of the works of Temple, and that is, he was a student of men and history. He possessed the true historical and comparative spirit in treating politics and institutions. Like Mr. Bryce in describing the American Commonwealth for Englishmen of to-day, Temple traces for the statesmen of his time, the growth, character and influence of the institutions of the Dutch Provinces;† and he shows for the same purpose "the steps of trade and riches, of order and power in a State, and

* Vol. III. Essay on the "Advancement of Trade in Ireland;" also essay on "Popular Discontents."

† Vol. I. "Observations Upon the United Provinces," especially chapters ii, iv and vi.

those likewise of weak or violent counsels, of corrupt or ill conduct, of faction or obstinacy, which decay and dissolve the firmest governments ; that so, by reflections upon foreign events, they may provide the better and earlier against those at home." * Again in his letter to the Secretary of State, after completing his embassy at the Court of the Hague, 1671, he writes : "The decay and dissolution of civil as well as natural bodies, proceeding usually from outward blows and accidents, as well as inward distempers or infirmities, it seems equally necessary for any government to know and reflect upon the constitutions, forces, and conjunctions among their neighboring States, as well as the factions, humors, and interests of their own subjects ; for all power is but comparative." † "Example or instruction . . . are the great ends of history and ought to be the chief care of all historians." ‡ "None can be said to know things well who does not know them from their beginning." § Verily historical and comparative politics is not a new science.

Summing up his considerations on the sources and adaptations of governments this seventeenth century statesman and diplomatist, enunciates a principle of historical inquiry which is but gradually being accepted, even in this day, when students are beginning to recognize the relativity of theory and the relative merits of institutions. It is remarkable in its complete recognition of the necessity of historical knowledge and study in passing judgment upon the relative merits and demerits of past and present forms of human society. He writes as follows :

"I will not enter into the arguments or comparisons of the several forms of government that have been, or are in the world . . . they have all their heights and their falls, their strong and weak sides ; are capable of great perfections,

* Vol. I. Preface to Observations

† Vol. II, pp. 205, 206.

‡ Vol. III, pp. 187-8

§ *Ibid.*, p. 62.

and subject to great corruptions ; and though the preference seem already decided in what has been said of a single person being the original and natural government ; and that it is capable of the greatest authority (. . .) yet it may, perhaps, be the most reasonably concluded, that those forms are best which have been longest received and authorized in a nation by custom and use ; and into which the humors and manners of the people run with the most general and strongest current. Or else that those are the best governments, where the best men govern ; and that the difference is not so great in the forms of magistracy as in the persons of the magistrates ;" * and in another connection : " Were the constitutions of any government never so perfect, the laws never so just ; yet if the administration be ill, ignorant or corrupt, too rigid or too remiss, too negligent or severe there will be more just occasions given of discontent and complaint, than from any weakness or fault in the original conception or institution of government." † " The life of all laws is the due execution of them, so the life and perfection of all governments is the due administration." ‡

IV.

Such, in brief, is a *résumé* of Temple's theory of the origin and nature of government. The radical dissimilarity between his and the conflicting doctrines of the " schools " is manifest. His opposition to the notion of a social compact lead him so far as to deny that man was a social creature, possessed of a love of company and all that it implies. While, on the other hand, he was unable to accept the view that men were beasts of prey, continually waging a war of extermination upon each other. § The " struggle for existence " and " the survival of the fittest " had no meaning in his political vocabulary. He claimed that nature herself controverted

* Vol. I, p. 50.

† Vol. III, p. 41. Popular Discontents.

‡ *Ibid.*, p. 57.

§ Vol. I, pp. 37-39, 46

both propositions. The so-called socially inclined fight in hunger and in lust. The bull and the ram, like lion and the wolf, wage equally fierce battle for the gratification of their wants and passions. A life struggle, in the Darwinian sense, was to him a mere imagination of the expounders of a theory unwarranted by the facts of nature. Granting some truth, even, to such an hypothesis, he was unable to catalogue the different races and peoples with any degree of profit or consistency. Customs, manners, institutions, all the phenomena of societies vary so much and overlapped within themselves so constantly that it would prove a useless as well as an impossible task to try to make any such logical division of men and governments. "Nor," says he, "do I know if men are like sheep, why they need any government: or if they are like wolves, how they can suffer it." Struck solely with the false reasoning involved in both antagonistic theories prevalent at the time, Temple, here, fails to grasp the fundamental truths contained in them. Society is the manifestation and equilibrium of both dispositions, social and beligerent. His own account of the rise of society contradicts his words here. But one can well pardon this slight slip in rigid consistency of argument.

Like all opponents of the "social compact" in our day, he desires its advocates to cite any instances of such convention; or the coming of a people together for the express purpose of launching a new State. No nations or governments within historic knowledge would substantiate their claim. Those nations of antiquity that seem to give some shadow of validity to conscious formation prove his own theory. At the instance of a noted man, as Solon or Lycurgus, Athens and Sparta assumed a peculiar constitution. But previously existing customs were merely crystallized into more definite form, the different orders and institutions of those cities were amalgamated into a more workable shape: "and where this has not happened the original government lies as undiscovered in story, as that of time."*

* Vol. I, pp. 39, 49.

Even in those cases where tribes unite to form a nation and thus give some color to the contract, it is not as single persons but as heads of large families and clans that a compact is in a manner drawn up. It is therefore those who have attained to a position of power and authority in the family and who act as representatives of a political organism.* No change or revolution in the modes of life is affected, as Hooker, Hobbes, Locke or Rousseau would have us believe. The contract origin of the State he regarded as consistent only with the fabulous stories of ancient classic poets. Were men born into the world, Titan-like, perfect in stature, full developed in all their mental faculties, the theory might then be true or at least plausible.†

Thus in opposition to the current of philosophy of his century, along totally different lines of reasoning, Temple arrived at the same conclusions which have been the objects of the great thinkers and agitators of the last three centuries of struggle for civil liberty. Piercing through the captivating sophistry of the social compact, uninfluenced by arguments drawn from Hebrew legends, or the dogmatism of the defenders of the Stuarts, he builds his theory of government upon the broad foundation of the necessities of man and the customs and consent of a people, "Or the greatest or strongest part of them; whether this proceed from reflections upon what is past, by the reverence of an authority under which they and their ancestors have for many ages been born and bred; or from a sense of what is present, by the ease, plenty and safety they enjoy; or from opinions of what is to come, by the fear they have of the present government, or hopes from another."

Here follows his famous comparison of the State to the pyramid, a simile justly celebrated in the literature of his own and following century, and which is still a favorite with writers of to-day.‡

* Vol. I, p. 39.

† *Ibid.*

‡ See the figures of the inverted and upright pyramids representing Monarchy and Democracy on the front of Andrew Carnegie's "Triumphant Democracy."

"Now that government which by any of these, or all these ways, takes in the consent of the greatest number of the people, and consequently their desires and resolutions to support it, may justly be said to have the broadest bottom, and to stand on the largest compass of ground; and, if it terminate in the authority of one single person, it may likewise be said to have the narrowest top, and so to make the figure of the firmest sort of pyramid."

"On the contrary, a government which by alienating the affections, losing the opinions, and crossing the interests of the people, leaves out of its compass the greatest part of their consent, may be justly said . . . to narrow its bottom; . . . by this means the top may be justly said to grow broader. . . . The stability of the figure is by the same lessened and impaired; . . . it begins to grow subject to the accidents of wind and weather." . . . "and the more endangered by every storm in the air, or every shake of the earth."

"'Tis true that a pyramid reversed may stand a while upon its point, if balanced by admirable skill, and held up by perpetual care, and there be a calm in the air about it; nay, if the point be very hard and strong, and the soil very yielding and soft, it may pierce into the ground with time, so as to grow the firmer the longer it stands;* but this last can never happen if either the top of figure be weak or soft, or if the soil be hard and rough."†

One may search long and diligently, and perhaps then in vain, to discover a figure surpassing this in its perfect symbolism.

V.

But what of Temple's place in the procession of political philosophers? Surely the calm judgment of the judicial

Professor Bryce in speaking of the excellence of popular government by public opinion compares it to the pyramid. He traces the use of the metaphor back to our constitutional convention,—Elliot's *Debates*, vol. II, p. 542.

* The present deplorable condition of the people in Turkey is a remarkable instance of national life being crushed out by the weight of a monstrous tyranny.

† Vol. I, pp. 51, 52.

Hallam, that "he has the merit of a comprehensive and candid mind," * must needs meet with our approval. Considering the almost universal domination of the theories of natural liberty and of the social contract in the seventeenth and following centuries; remembering what a stupendous influence these ideas had for good and for evil in the American and French Revolutions; knowing that their ascendancy in economic, social and political reasoning was not overthrown until the historical and comparative studies in law, politics and sociology of the last half of this century, Temple's essay upon government holds a truly unique place in the evolution of political theory. It was, indeed, a "sport" in the realm of philosophy.

The essay is the more remarkable in the fact that it did not presume to be a profound and pretentious treatise, the result of comprehensive studies, research and reflection. Temple, although he was very far from being superficial, was not a profound thinker and thorough-going student. He was a man of the world who loved his leisure and country retreat; a diplomat, suave, affable, dignified, who concerned himself little about the bothersome subtleties of dialectics, but took his delight in the amenities of the drawing room, or sought refuge from the plots and intrigues of statecraft in the genteel occupation of writing polished essays and charming memoirs. He frankly confesses that he composed his political essays for his own amusement and pastime, hoping, nevertheless, that his observations might prove of some service to his fellow-countrymen.

His exceptional opportunities as a foreign minister for observing the social and political life of men and the great use which he made of them, alone explain the nature of his views. The life and institutions of the Dutch Provinces made a deep impression upon him. The many and unfortunate changes that his fortunes underwent during his public career under the restored Stuarts, these and historical studies led him to account for the nature and origin of au-

* Introduction to "Literature of Europe," Pt. iv. ch. vii., sec. 42.

thority and government in the manner we have seen. What he might have given us had he applied himself to the problem with the earnestness and resoluteness of a Hobbes or Locke, can only be conjectured. But semi-fragmentary as his work was, unsatisfactory even, when compared with more modern treatments of the same theme, judged from the standpoint of his age and political environment, Temple is worthy a high rank.

What the influence of his short essay was it is difficult to estimate. Indeed, it may be reasonably doubted if he affected even slightly the current of political philosophy. His ideas, born prematurely, failed entirely of a favorable reception. The times were against him. The State and Law of Nature filled the air; his theory was stifled. Great thinkers were, and continued to be, under the delusion of natural liberty for the next century and a half.

Locke, twenty years after, does not notice his arguments, but devotes all his energies and logic to refuting the assumptions of Filmer and establishing the contract conception of society and the State. In contemporary literature the essay seems to have aroused little attention and created but slight comment. It was seed cast upon stony ground.

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Frank Van G. H. 1877

